

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

STACIE ADCOX, ET AL.	§	
	§	
VS.	§	CIVIL ACTION NO. G-04-633
	§	
WAL-MART STORES, INC., ET AL.	§	

OPINION AND ORDER


Before the Court is a Report and Recommendation of the Magistrate Judge which recommends that the “ Motion for Temporary Restraining Order and Injunctive Relief” of the Plaintiffs be denied. Plaintiffs have filed timely objections.

After *de novo* review of the Report and Recommendation and the tape recording of the Hearing before the Magistrate Judge, this Court agrees with the Magistrate Judge’ s recommendation. The Magistrate Judge explained that he had before him conflicting affidavits which apprized him of the substance of the Plaintiffs’ absent witnesses’ potential testimony as well as the potential adverse testimony of the Defendants’ witnesses who were present and prepared to testify. The Magistrate Judge correctly determined that the testimony of the Plaintiffs’ contact person was hearsay and he had the discretion to exclude the proposed cumulative evidence under the circumstances and to abort the Evidentiary Hearing. Federal Savings & Loan Ins. Co. v. Dixon, 835 F.2d 554, 558 (5th Cir. 1987) A review of the conflicting affidavits indicates that there was insufficient evidence to justify the issuance of an injunction.

It is, therefore, the **ORDER** of this Court that the Report and Recommendation of the Magistrate Judge is **ACCEPTED** and that the Plaintiffs “ Motion for Temporary Restraining Order and Injunctive Relief” (Instrument no. 83) is **DENIED**.

The Court joins the Magistrate Judge in recommending that Wal-Mart ensure its appropriate employees are notified not to interfere in the opt-in process.

DONE at Galveston, Texas, this 5th day of October, 2006.



Samuel B. Kent
United States District Judge